

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-09-IH-1176
)	
)	NAL/Acct. No. 201032080022
Globalcom, Inc.)	
)	FRN No. 0004325320
)	
Apparent Liability for Forfeiture)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 26, 2010

Released: March 30, 2010

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Globalcom, Inc. (“Globalcom”), apparently violated section 254(d) of the Communications Act of 1934, as amended (the “Act”),¹ and sections 54.706(a) and 54.711(a) of the Commission’s rules,² by willfully or repeatedly failing to make required regulatory filings, as well as failing to contribute fully and timely to the Universal Service Fund (“USF”). Based on our review of the facts and circumstances surrounding this matter, and for the reasons discussed below, we find that Globalcom is apparently liable for a total forfeiture of \$800,700. We find this significant forfeiture is warranted based on Globalcom’s repeated failures to satisfy its obligations to the USF, spanning more than a year’s time and amounting to a delinquency of more than \$960,000 to the Fund.

2. We order Globalcom to submit within thirty days a report, supported by a sworn statement or declaration under penalty of perjury of a corporate officer, setting forth in detail its plan to come into compliance with the reporting and payment obligations discussed herein.

II. BACKGROUND

3. The Act codifies Congress’s historic commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”³ In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to register with the Commission,

¹ 47 U.S.C. § 254(d).

² 47 C.F.R. §§ 54.706(a) and 54.711(a).

³ 47 U.S.C. § 254(d).

comply with annual and quarterly filing requirements, and contribute to the universal service fund based upon their interstate and international end-user telecommunications revenues.⁴ The Universal Service Administrative Company (“USAC”) currently administers the USF.⁵ USAC uses the revenue projections submitted on the quarterly filings to determine each carrier’s monthly universal service contribution amount, and bills them accordingly each month.⁶ Consistent with the Debt Collection Improvement Act of 1996 (“DCIA”),⁷ USF contributions that have become over 90 days delinquent are transferred to the Commission for further action to collect the outstanding debt.⁸ Failure by some providers to pay their share into the USF skews the playing field by giving them an economic advantage over their competitors, who must then shoulder more than their fair share of the costs of universal service.

4. The Commission has established specific procedures for the administration of the USF and other associated federal regulatory programs. Pursuant to section 54.711(a) of the Commission’s rules, a carrier is required to file FCC Form 499-A, also known as the annual Telecommunications Reporting Worksheet (“annual Worksheet” or “Form 499-A”),⁹ for the purpose of determining its USF, Telecommunications Relay Services Fund (“TRS Fund”), Local Number Portability (“LNP”), and North American Numbering Plan (“NANP”) administration and regulatory fee payments, and, with certain exceptions, to file Quarterly Telecommunications Reporting Worksheets (“quarterly Worksheet” or “Form 499-Q”) to determine its monthly universal service contribution amounts.¹⁰ These periodic filings trigger a determination of liability, if any, and subsequent billing and collection by the entities that administer the regulatory programs.¹¹ Carriers must timely pay their contribution invoices,¹² and the

⁴ 47 C.F.R. §§ 54.706(b), 54.711, 64.1195. *See also* 47 U.S.C. § 254(d) (“Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”). Contributions are based on a contributor’s projected revenues, and individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up. *Id.*; 47 C.F.R. § 54.709(b).

⁵ 47 C.F.R. § 54.701(a).

⁶ *See* 47 C.F.R. § 54.709.

⁷ *See* Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996). Pursuant to the “red light rule,” the Commission withholds action on applications or other requests for benefits by delinquent debtors and ultimately dismisses such applications or other requests if the delinquency is not resolved. *See* 47 C.F.R. § 1.1910.

⁸ Invoices for USF contributions that become over 90 days delinquent are transferred to the Commission for further collection. *See* <http://www.universalservice.org/fund-administration/contributors/understanding-your-invoice/important-invoicing-deadlines.aspx>. Debt collection procedures may include further administrative efforts both by the Commission and the United States Treasury or, as appropriate, the Commission may refer the delinquent debt to the Department of Justice for enforced collection action. 47 C.F.R. § 1.1917. Collection efforts may result in additional charges, to include interest and penalties, as provided under 31 U.S.C. § 3717, and administrative charges pursuant to 47 C.F.R. §§ 1.1940 and 54.713, 31 C.F.R. § 285.12(j).

⁹ *See FCC Form 499-A Telecommunications Reporting Worksheet – Annual Filing*, <http://www.fcc.gov/Forms/Form499-A/499a-2009.pdf> (February 2009) (“Annual Worksheet”).

¹⁰ *See Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T, Report and Order and Order on Reconsideration*, 16 FCC Rcd 5748 (2001) (“*Quarterly Reporting Order*”). Carriers report their revenues for the prior quarter by the beginning of the second month in each quarter (*i.e.*, February 1, May 1, August 1, and November 1). *See Quarterly Reporting Order*, 16 FCC Rcd at 5755, ¶ 19 & n.32. *See also FCC Form 499-Q Telecommunications Reporting Worksheet – Quarterly Filing for Universal Service Contributors*, <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (April 2009) (“*Quarterly Worksheet*”).

¹¹ *See* 47 C.F.R. § 54.709.

¹² *See* 47 C.F.R. § 54.711(a) (“The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.”); “Proposed Second

(Continued...)

Commission's rules explicitly warn contributors that failure to file forms or submit payments potentially subjects them to enforcement action.¹³

5. Globalcom is an Illinois-based company that has provided telecommunications services since 1996.¹⁴ A facilities-based provider of voice and data services, Globalcom provides local and long distance services primarily to small and medium-sized businesses.¹⁵ First Communications, Inc. acquired Globalcom's holding company, GCI Globalcom Holdings, Inc., on October 1, 2008.¹⁶

6. In July 2009, USAC referred Globalcom to the Bureau for potential enforcement action, alleging that Globalcom had failed to comply with the Commission's USF contribution rules. The Bureau initiated an investigation against Globalcom on August 6, 2009, by issuing a letter of inquiry ("LOI") to Globalcom seeking information about its compliance with USF and other related regulatory obligations.¹⁷ Globalcom's LOI Response indicates that it failed to pay certain USAC invoices in full and on time, and that it failed to timely file certain quarterly and annual worksheets.¹⁸ Specifically, since the October 2008 acquisition, Globalcom failed on nine occasions to pay any contribution toward its outstanding USF obligations, and it made only partial payments toward its USF obligations on four occasions.¹⁹ Lastly, Globalcom failed to timely file its annual Worksheet for 2009, as well as its quarterly Worksheet for May 2009. Both of these Worksheets were filed in September 2009, months after they were due and immediately following Globalcom's receipt of the LOI.

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Quarter 2006 Contribution Factor," Public Notice, 21 FCC Rcd 2379 (Wireline Comp. Bur. 2006) ("Contribution payments are due on the date shown on the invoice."). *See also* 47 C.F.R. § 54.713(b) (noting that if a USF "contributor fails to make full payment on or before the date due of . . . the monthly invoice provided by the Administrator, the payment is delinquent."). *Id.* The Act and our rules, however, do not condition payment on receipt of an invoice or other notice from USAC or other fund administrator. *See* 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706(b) and 64.604(c)(5)(iii)(A). A carrier that does not file may not receive an invoice from USAC, but is nonetheless required to contribute to the USF, unless its revenues are considered *de minimis*. *See Globcom, Inc.*, Notice of Apparent Liability, 18 FCC Rcd 19890, 19896, ¶ 5, n.22 (2003) ("*Globcom NAL*") (subsequent history omitted). The instructions for the Worksheet include tables for carriers to determine their annual contributions. Providers whose annual contribution is less than \$10,000 are considered *de minimis* and exempted from contributing to the USF. 47 C.F.R. § 54.708.

¹³ *See* 47 C.F.R. § 54.713.

¹⁴ *See Response of Globalcom, Inc. to the Enforcement Bureau's August 6, 2009 Letter of Inquiry*, dated Sept. 22, 2009, at response to Question 2 ("LOI Response").

¹⁵ *Id.* at response to Question 4.

¹⁶ *See* Press Release of First Communications, Inc., "Welcome Letter from Ray Hexamer, Chief Executive Officer of First Communications," dated Oct. 1, 2008, available at http://www.global-com.com/news_detail.aspx?id=1210.

¹⁷ Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Raymond Hexamer, Chief Executive Officer, First Communications d/b/a Globalcom, Inc., dated August 6, 2009 ("LOI").

¹⁸ *See LOI Response* at responses to Questions 9 and 11.

¹⁹ As a result of Globalcom's failures to satisfy its large outstanding balances owed to the USF, USAC transferred \$447,177.55 of the company's debt to the Commission for collection procedures, pursuant to the DCIA. USAC transferred this debt to the Commission over the period from August to November 2009. *See* USAC Invoices Issued to Globalcom, Inc., dated August 2009 through November 2009.

III. DISCUSSION

7. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁰ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.²¹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,²² and the Commission has so interpreted the term in the section 503(b) context.²³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁴ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.²⁵ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²⁶ The Commission will then issue a forfeiture if it finds, based on the evidence, that the person has violated the Act or a Commission rule.²⁷ As set forth below, we conclude that Globalcom is apparently liable for forfeiture for its apparent willful and repeated violations of section 254(d) of the Act²⁸ and sections 54.706(a) and 54.711(a) of the Commission’s rules.²⁹

8. The fundamental issues in this case are whether Globalcom apparently violated the Act and the Commission’s rules by (1) willfully or repeatedly failing to make required contributions to the USF; and (2) willfully or repeatedly failing to file accurate and timely quarterly and annual FCC Forms 499. We answer these questions in the affirmative. Based on the facts and circumstances before us, we therefore conclude that Globalcom is apparently liable for a forfeiture of \$800,700.

A. Globalcom Apparently Failed To Make Universal Service Fund Contributions

9. We conclude that Globalcom has apparently violated section 254(d) of the Act and section 54.706 of the Commission’s rules by willfully and repeatedly failing to contribute fully and timely to the universal service support mechanisms.³⁰ Section 54.706(a) of the Commission’s rules

²⁰ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

²¹ 47 U.S.C. § 312(f)(1).

²² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²³ *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

²⁴ *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

²⁵ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

²⁶ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁷ *See, e.g., SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

²⁸ 47 U.S.C. § 254(d).

²⁹ 47 C.F.R. §§ 54.706(a) and 54.711(a).

³⁰ 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a).

unambiguously directs that “entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support mechanisms.”³¹ “Interstate telecommunications” include, among other things, “access to interexchange service” and “resale of interstate services,” such as those provided by Globalcom.³² Globalcom acknowledges that it was required to make USF contributions at all relevant times.³³

10. Globalcom’s USF payment problems began in November 2008 when the company paid less than the balance due on its invoices due in November and December 2008 and January and February 2009.³⁴ Its payment problems worsened after that, however, when between March and December 2009, Globalcom failed to remit any contribution toward its outstanding USF obligations.³⁵ Since March 2009, Globalcom made only one USF payment, on September 8, 2009, 33 days after the Bureau sent its LOI to the company.³⁶ This payment was nevertheless insufficient to pay the amount due at that time. As a result of these failures – and particularly since mid-2009 – Globalcom has maintained large outstanding USF balances with USAC.³⁷ At one point, Globalcom had an outstanding USF balance amounting to more than \$960,000. Globalcom does not dispute that it owed the money or that it failed to pay the full balance due to the USF.³⁸

11. Based on the record developed in our investigation, we find that Globalcom has apparently violated section 254(d) of the Act and section 54.706 of the Commission’s rules by willfully and repeatedly failing to contribute fully and timely to the USF since November 2008.

³¹ 47 C.F.R. § 54.706(a).

³² *Id.*

³³ See *LOI Response* at response to Question 11.

³⁴ *Id.*

³⁵ See *id.*

³⁶ *Id.*

³⁷ The violations continued with each subsequent day on which Globalcom failed to make full payment. See *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4723, ¶ 35 n.105 (2006) (“*Globcom Forfeiture Order*”) (“Each failure to pay the amount due each month constituted a violation that continued for more than 10 days.”). USAC’s practice is to apply partial payments to the oldest debt carried on USAC’s books first, and not the current billed amount. See *North American Telephone Network, LLC*, Forfeiture Order, 16 FCC Rcd 4836, 4838, ¶ 8 n.12 (2001); *Intellicall Operator Services*, Forfeiture Order, 15 FCC Rcd 21771, 21772, ¶ 6 n.8. This practice was codified by the Commission in 2007. See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16380-81, ¶ 16 (2007); 47 C.F.R. § 54.713(e). Each violation is considered continuing until cured by full payment of each monthly obligation, as provided on the corresponding invoices. See *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7238-39, ¶ 15 (2008) (“*Telrite NAL*”); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6140, ¶ 33 (2008) (“*Compass Global NAL*”); *Global Crossing North America, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6110, 6122, ¶¶ 25-27 (2008) (“*Global Crossing NAL*”); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940, ¶ 24 & n.69 (2007) (“*VCI NAL*”); *Matrix Telecom, Inc.*, Notice of Apparent Liability, 15 FCC Rcd 13544 (2000); *Conquest Operator Services Corp.*, Order of Forfeiture, 14 FCC Rcd 12518, 12525, ¶ 16 (1999).

³⁸ See *LOI Response* at response to Question 11.

B. Globalcom Apparently Failed to Submit Timely Telecommunications Reporting Worksheets

12. A carrier's failure to file the required periodic Telecommunications Reporting Worksheets has serious implications for the USF and other programs. With regard to the federal universal service program in particular, the failure of a carrier such as Globalcom to abide by its federal filing obligations has a direct and profound detrimental impact by removing from the base of USF contributions telecommunications revenues that otherwise should be included, thereby shifting to compliant carriers additional economic burdens associated with the federal universal service program. Consequently, a carrier's failure to file required Worksheets frustrates the very purpose for which Congress enacted section 254(d) of the Act – to ensure that every interstate carrier “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”³⁹ Viewed in this context, the Telecommunications Reporting Worksheet is not only an administrative tool, but a fundamental and critical component of the Commission's universal service program.

13. We conclude that Globalcom apparently violated section 254(d) of the Act and section 54.711(a) of the Commission's rules⁴⁰ by willfully and repeatedly failing to file certain Telecommunications Reporting Worksheets on a timely basis in April and May 2009. Section 54.711(a) requires contributors to submit a Worksheet with specified information to USAC annually and quarterly, with certain exceptions.⁴¹ Globalcom does not dispute that it was required to file Worksheets annually and quarterly at all relevant times. Globalcom did not file its 2009 Form 499-A until September 9, 2009, five months after it was due. Additionally, Globalcom filed its quarterly worksheet for May 2009 four months late, on September 3, 2009. Both of these filings were made immediately following Globalcom's receipt of the Bureau's LOI. Based on Globalcom's filing history, we find that Globalcom apparently violated section 254(d) of the Act and section 54.711(a) of the Commission's rules by willfully and repeatedly failing to timely file Telecommunications Reporting Worksheets.

C. Proposed Forfeiture Amount

14. Section 503(b)(1) of the Act provides that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁴² Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act.⁴³ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require,” as well as our forfeiture guidelines.⁴⁴

³⁹ 47 U.S.C. § 254(d).

⁴⁰ 47 C.F.R. § 54.711(a).

⁴¹ See *supra*, para. 4.

⁴² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

⁴³ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000).

⁴⁴ 47 C.F.R. § 1.80(b)(4), Note, Guidelines for Assessing Forfeitures.

15. We find that Globalcom failed to make payments to the USF on nine occasions between March and December 2009, and it made only partial payments in December 2008 and January, February and August 2009.⁴⁵ Nonpayment of universal service contributions is an egregious offense. It not only deprives the USF of resources necessary to preserve and advance universal service, but it also bestows on delinquent entities an unfair competitive advantage by shifting to compliant contributors the economic costs and burdens associated with universal service. An entity's failure to make required universal service contributions frustrates Congress' policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications providers.⁴⁶ The Commission has established a base forfeiture amount of \$10,000 for each month in which a contributor has failed to fully pay required universal service contributions and \$20,000 for each month in which a contributor has failed to make any required universal service contribution,⁴⁷ plus an upward adjustment based on one-half of the company's approximate unpaid contributions.⁴⁸ In addition, the Commission has treated failures to pay universal service and other obligations as continuing violations.⁴⁹ Our forfeiture calculation therefore reflects not only violations that began within the last twelve months, but all violations, unless they were cured more than one year ago.

16. As a result, we find that Globalcom is apparently liable for willfully and repeatedly failing to contribute fully and timely to the USF on a total of thirteen occasions between December 2008 and December 2009. Accordingly, we assess a \$20,000 forfeiture for each of the nine months in which Globalcom failed to remit any contribution toward its outstanding USF obligation.⁵⁰ We also assess \$10,000 for each of the four months in which Globalcom contributed less than the amount of its monthly obligation, as provided on the corresponding invoices.⁵¹ Thus, we find Globalcom apparently liable for a base forfeiture of \$220,000 for its willful and repeated failures to contribute fully and timely to the USF on thirteen occasions between December 2008 and the date of this *NAL*. Moreover, consistent with our approach for assessing liability for apparent USF violations, and taking into account all the factors enumerated in section 503(b)(2)(E) of the Act, we also add an upward adjustment of \$480,700, approximately one-half of the largest amount of Globalcom's unpaid USF contributions due to USAC and the FCC during the period at issue,⁵² to the base forfeiture. We therefore find Globalcom apparently liable for a forfeiture of \$700,700 for its apparent willful or repeated failures to contribute fully and timely to the USF.

17. We further find that Globalcom's willful and repeated failures to timely file the required Telecommunications Worksheets are egregious. By failing to provide the necessary revenue information

⁴⁵ See *supra* para. 11.

⁴⁶ See 47 U.S.C. § 254(d).

⁴⁷ See *OCMC, Inc.*, Order of Forfeiture, 21 FCC Rcd 10479, 10482, ¶ 10 (2006) ("*OCMC Forfeiture Order*"); *Globcom NAL*, 18 FCC Rcd at 19903-04, ¶¶ 25-27; *Globcom Forfeiture Order*, 21 FCC Rcd at 4721-24, ¶¶ 31-38.

⁴⁸ See, e.g., *Globcom Forfeiture Order*, 21 FCC Rcd at 4722, ¶ 33; *OCMC Forfeiture Order*, 21 FCC Rcd at 10482, ¶ 10.

⁴⁹ See, e.g. *Global Crossing NAL*, 23 FCC Rcd at 6120-21, ¶¶ 21-24 (proposing \$10,518,013 forfeiture for, *inter alia*, the apparent failure to make required universal service contributions); *Telrite NAL*, 23 FCC Rcd at 7245-46, ¶ 36 (proposing \$924,212 forfeiture for, *inter alia*, the apparent failure to make required universal service contributions); *Compass Global NAL*, 23 FCC Rcd at 6140-42, ¶¶ 34-38 (proposing \$828,613.44 forfeiture for, *inter alia*, the apparent failure to make required universal service contributions).

⁵⁰ These months consist of March, April, May, June, July, September, October, November, and December 2009. See *supra* para. 11.

⁵¹ These months consist of December 2008, January 2009, February 2009, and August 2009. See *supra* para. 11.

⁵² See *supra*, para. 10.

on a timely basis, Globalcom has delayed payment into the USF and related programs, thereby interfering with the administration of those programs. Globalcom did not file its annual Telecommunications Worksheet that was due April 1, 2009 until September 9, 2009.⁵³ Similarly, Globalcom failed to timely file the quarterly Worksheet due on May 1, 2009, filing it on September 3, 2009.⁵⁴ A contributor's obligation to file these Worksheets is directly linked to, and thus has serious implications for, administration of the USF and related programs. Globalcom's delayed payment into these programs shifted to compliant contributors and their customers the economic costs associated with the administration of these programs. As noted above, in the past, the Commission has proposed a forfeiture of \$50,000 for each failure to file a Worksheet or for filing an inaccurate quarterly or annual Worksheet.⁵⁵ Accordingly, we find that Globalcom is apparently liable for a \$100,000 forfeiture for failure to timely file FCC Forms 499 due on April 1 and May 1, 2009.

IV. CONCLUSION

18. In light of the seriousness, duration and scope of the apparent violations, we propose a forfeiture in the amount of \$800,700. As discussed, this proposed forfeiture amount includes a total proposed forfeiture of \$700,700 for Globalcom's failure to pay its USF obligations, and a total proposed forfeiture of \$100,000 for Globalcom's failure to timely file Telecommunications Reporting Worksheets.⁵⁶

19. We caution that additional violations of the Act or the Commission's rules could subject Globalcom to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of Globalcom's operating authority, including disqualification of Globalcom's principals from the provision of any interstate common carrier services without the prior consent of the Commission.⁵⁷

V. ORDERING CLAUSES

20. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Globalcom is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$800,700 for willfully and repeatedly violating the Act and the Commission's rules.

21. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,⁵⁸ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Globalcom

⁵³ See *supra* para. 12.

⁵⁴ See *id.*

⁵⁵ See *Globcom Forfeiture Order*, 41 FCC Rcd at 4720, ¶¶ 26-28; *InPhonic, Inc.*, Notice of Apparent Liability of Forfeiture and Order, 20 FCC Rcd 13277, 13287, ¶ 26 (2005).

⁵⁶ Globalcom continues to have an unpaid outstanding balance due to USAC. We note that payment of the forfeiture proposed in this *NAL* does not absolve Globalcom of its liability for its obligations to pay its delinquent balance due to the USF. As discussed *supra* at note 8, debt collection procedures may include further administrative efforts both by the Commission and the United States Treasury or, as appropriate, the Commission may refer the delinquent debt to the Department of Justice for enforced collection action. 47 C.F.R. § 1.1917.

⁵⁷ See *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

⁵⁸ See 47 C.F.R. § 1.1914.

SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

22. IT IS FURTHER ORDERED THAT Globalcom shall submit within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, a report supported by a sworn statement or declaration under penalty of perjury of a corporate officer setting forth in detail its plan to come into compliance with the reporting and payment obligations discussed herein. The report must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554. Globalcom shall also transmit a copy of the report via email to hillary.denigro@fcc.gov.

23. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Globalcom will also send electronic notification within forty-eight (48) hours of the date said payment is made to Mindy.Littell@fcc.gov.

24. The response, if any, to this NOTICE OF APPARENT LIABILITY must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

25. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

26. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. For answers to questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov.⁵⁹

⁵⁹ See *id.*

27. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE shall be sent by certified mail, return receipt requested, to Globalcom, Inc., Raymond Hexamer, Chief Executive Officer, 3340 West Market St., Akron, OH 44333.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary